**Editor's note: Reconsideration denied by Order dated June 21, 1994.**

JOHN B. STONE

IBLA 91-473 Decided April 22, 1994

Appeal from decision of the Alaska State Office, Bureau of Land Management, approving certain lands for conveyance to Doyon Limited.
AA-8103-2.

1. Alaska: Mining Claims--Alaska Native Claims Settlement Act: Conveyances: Regional Conveyances--Alaska Native Claims Settlement Act: Conveyances: Valid Existing Rights: Third-Party Interests

   Under sec. 22(c) of ANCSA, 43 U.S.C. § 1621(c) (1988), BLM may convey land that is subject to unpatented mining claims located prior Aug. 31, 1971, to Regional Native Corporations.

APPEARANCES: John B. Stone, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

John B. Stone has appealed from the August 27, 1991, decision of the Alaska State Office, Bureau of Land Management (BLM), approving for conveyance to Doyon, Limited, approximately 608 acres comprising appellant's unpatented mining claims formerly included in mineral survey applications AA-12517, AA-12518, and AA-50206. The conveyance to Doyon was approved pursuant to section 14(e) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1613(e) (1988).

On appeal, appellant states that his parents started living on the claims in 1937, that he has lived there since his birth in 1939, and that they have kept up their assessment work. Appellant states that since his father passed away in 1966, appellant, along with his wife and son, have occupied the land and "have put money, time and labor into this place." Appellant asserts that he "can't see how you can take a man's home and work away from him and give to someone else."

[1] Although appellant believes that the Government is taking something away from him, the Federal Government is the owner of legal title to mining claims until a patent has been issued. In Alaska Miners v. Andrus, 662 F.2d 557 (9th Cir. 1981), the Court recognized that Congress has the power to convey legal title to its land covered by unpatented mining claims, subject to whatever valid existing rights the mining claimants may have established. Congress enacted ANCSA in response to "an immediate need for

a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims." 43 U.S.C § 1601(a). The statute provided for the establishment of corporations whose shareholders were Natives of various regions and villages in Alaska and gave those corporations the opportunity to select land owned by the Federal Government, including land covered by unpatented mining claims.

However, the statute also protected the legitimate rights of mining claimants. Under section 22(c) of ANCSA, 43 U.S.C. § 1621(c) (1988), the owner of a claim initiated prior to August 31, 1971, was "protected in his possessory rights, if all the requirements of the general mining laws are complied with, for a period of 5 years and may, if all requirements of the general mining laws are complied with, proceed to patent." 1/ The holder of a valid mining claim who did not wish to have the land patented to a regional corporation was required to file a patent application within the time limits set forth in ANCSA. See Alaska Miners v. Andrus, supra.

On April 3, 1975, Doyon filed selection application AA-8103-2 for certain lands including those within sec. T. 27 S., R. 21 E., Kateel River Meridian, Alaska. On December 15, 1976, appellant filed application AA-12517 for a mineral survey [(MS) 2312] of certain mining claims in that township. This was assigned mineral survey (MS) No. 2312. On that same day, appellant and Joseph E. Vogler filed application AA-12518 for a mineral survey for other mining claims in that township, which was assigned MS No. 2314. Although appellant did not file patent applications, BLM's regulations provided that under certain circumstances, the filing of an application for a mineral survey submitted for the purpose of proceeding to a patent would constitute an acceptable mineral patent application. 43 CFR 2650.3-2(b)(1). Subsection (b)(2) of that regulation, however, provided that failure of an applicant to prosecute diligently his application for mineral patent to completion would result in the loss of benefits afforded by section 22(c) of the Act, 43 U.S.C. § 1621(c).

On April 30, 1979, BLM issued Doyon a decision approving certain land for interim conveyance that excluded the claims in appellant's applications. Although the order MS 2312 was cancelled in 1982, appellant filed application AA-50206 for survey of the same claims which was assigned MS No. 2464. On July 25, 1984, BLM issued interim conveyance No. 874 to Doyon including land within T. 27 S., R.1 E., but excepting land within mineral survey applications AA-50206, AA-12518, and AA-12517. Appellant did not have his claims surveyed nor did he undertake any other action to acquire a patent.

Subsequently, on July 7, 1987, BLM issued an order requiring appellant to show cause why mineral survey application AA-12518 for Mineral Survey No. 2314 should not be rejected. On July 17, 1987, a similar notice was

1/ During the pendency of this appeal, this section was redesignated as subsection (c)(1) by the Alaska Land Status Technical Corrections Act of 1992, P.L. 102-415, 106 Stat. 2112, 2121 (Oct. 14, 1992).

issued for application AA-50206 for Mineral Survey No. 2464. By separate decisions issued November 10, 1987, BLM cancelled the mineral surveys and closed the case files. No appeals were filed from these decisions. Nevertheless, inasmuch as the land included in the mineral survey applications had not yet been conveyed, appellant could have still filed a patent application. See 43 CFR 2650.3-2(c). Appellant, however, took no further action. Accordingly, we conclude that under section 22(c) of ANCSA, conveyance of the land to Doyon was proper. See Alaska Miners v. Andrus, supra. 2/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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John H. Kelly
Administrative Judge

I concur:

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James L. Burski
Administrative Judge

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2/ We note, as the Court did in Alaska Miners v. Andrus, supra at 579, that "[a]ppellants may well have an existing right to prevent third parties from interfering with their possessory interest," assuming that the claims are supported by a discovery of a valuable mineral deposit.